Chapter 1: Adjudicator responsibilities

Section 1. Code of conduct

A. General principles

As a DUA employee, you must treat everyone with whom you deal fairly. You must not treat anyone especially favorably or unfavorably and you must not use your position for your personal benefit.

You must not take any official action when you have a conflict of interest or the appearance of a conflict of interest. A conflict of interest occurs when a reasonable person could conclude that your personal, business, or financial interests may interfere with carrying out your duty to the public. Whether you are an honest person is not the standard by which a conflict of interest is determined. Instead, we look at whether an impartial observer could conclude that a conflict exists.

B. Confidentiality

Section 46(a) of G. L. c. 151A strictly limits the use and disclosure of information obtained by DUA in administering c. 151A:

> Except as provided in this section, information secured pursuant to this chapter is confidential and for the exclusive use and information of the department in the discharge of its duties. Such information is not a public record or admissible in any action or proceeding, except as provided in this section. This information is absolutely privileged and shall not be made the subject matter or basis in any action of slander, libel or emotional distress.[1]

You may not access, view, browse, or use any DUA information, including UI Online, except when authorized to do so and for a proper DUA purpose.[2] For example, it is improper to look up DUA data on a family member, neighbor, co-worker, or celebrity for any unauthorized, non-DUA purpose. (Note that working on a matter involving a family member, neighbor, or co-worker might be a conflict of interest.)

Likewise, you must protect the confidentiality of all DUA information. You may not disclose it, except when authorized to do so for a proper DUA purpose. For example, it is improper to tell friends about a claim or issue that you are assigned.

You must notify management of any potential unauthorized disclosure or use of DUA information.

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[1] The statute does contain limited exceptions, most notably, claimants and employers may request their own records. Requests for UI information should be referred to DUA's Legal Department.

[2] *See generally* The Fair Information Practices Act, G. L. c. 66A, (prohibiting unauthorized access of personal data) and the EOLWD's Confidentiality policy.

C. Conflict of interest law for state employees[3]

1. On-the-job restrictions

a. Bribes

You may not ask for or accept a bribe.[4] A bribe is anything of value corruptly offered to influence your official conduct.

b. Gifts and gratuities

You may not ask for or accept a gift because of your official position, or because of something you can do or have done in your official position.[5] You may not accept gifts and gratuities valued at $50 or more given to influence your official actions or because of your official position. Accepting or giving a gift intended to reward past official action or to bring about future official action is illegal. Meals, entertainment, event tickets, golf, gift baskets, and payment of travel expenses, may all be illegal gifts, if given in connection with official action or position, as may anything worth $50 or more. A number of smaller gifts together worth $50 or more may also violate these sections.

c. Misuse of position

You may not use your official position to get something for yourself or for someone else worth $50 or more that would not be properly available to other similarly situated individuals. Causing someone else to do this is also prohibited.

Using your official position to get something you are not entitled to, such as information, or to get others something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited.[6]

Example of violation: A co-worker asks you to see if his son-in-law is claiming the co-worker's grandchild as a dependent or is having child support withheld.

d. Self-dealing and nepotism

You may not participate in any particular matter in which you have, or a member of your immediate family—parents, children, siblings, spouse, and

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[3] This section of the handbook is modeled on Parts III, IV, and V of the State Ethics Commission's summary of Conflict of Interest Law for State Employees (Version 7, as revised May 10, 2013).

[4] *See* G. L. c. 268A, § 2.

[5] *See* G. L. c. 268A, §§ 3, 23(b)(2), and 26.

[6] *See* G. L. c. 268A, §§ 23(b)(2) and 26.

spouse's parents, children, and siblings—has, a financial interest.[7] You also may not participate in any particular matter in which a prospective employer, or a business organization of which you are a director, officer, trustee, or employee, has a financial interest. Participation includes discussing as well as acting on a matter, and delegating a matter to someone else.

It does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. You may not participate in any matter in which you have, or any of the persons or entities mentioned in the preceding paragraph has, a financial interest that is direct and immediate or reasonably foreseeable. Financial interests that are remote, speculative, or not sufficiently identifiable do not create conflicts.

Example of violation: A state employee promotes his son to a position under his supervision.

e. False claims

You may not present, or cause someone else to present, a false claim to your employer for a payment or benefit.[8]

Example of violation: A state agency manager directs her assistant to fill out time sheets to show her as present at work on days when she was skiing.

f. Appearance of conflict

Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited.[9]

You may not act in a manner that would cause a reasonable person to think that you would show favor toward someone or that you can be improperly influenced. You must consider whether your relationships and affiliations could prevent you from acting fairly and objectively when you perform your duties for DUA.[10] You can avoid violating this provision by disclosing the facts in writing to your appointing official.

Example where there is no violation: A DUA employee is engaged to be married to the owner of a business. The business owner submits a response to a DUA request for proposals (RFP). A reasonable person could conclude that the employee might favor her fiancé's response. The employee files a written disclosure with her appointing authority explaining her relationship with her

[7] *See* G. L. c. 268A, § 6.

[8] *See* G. L. c. 268A, § 23(b)(4) and 26.

[9] *See* G. L. c. 268A, § 23(b)(3).

[10] *See* G. L. c. 268A, § 23(b)(3).

fiancé prior to the meeting at which responses to the RFP will be considered. There is no violation of G. L. c. 268A, § 23(b)(3).

g. Confidential information

Improperly disclosing or personally using confidential information obtained through your job is prohibited.[11] You may not improperly disclose confidential information, or make personal use of non-public information you acquired in the course of your official duties.

Example of violation: A compliance officer tells a family member or an acquaintance about an enforcement action the employee is taking against the owner of the restaurant in which they are eating.

2. After-hours restrictions

a. Second paid job that conflicts with duties of state job

Taking a second paid job that conflicts with the duties of your state job is prohibited.[12]

You may not accept other paid employment with responsibilities incompatible with the state job.

Example: A DUA employee may not work for a third party administrator (TPA).

b. Divided loyalties

Receiving pay from anyone other than the state to work on a matter involving the state is prohibited. Acting as agent or attorney for anyone other than the state in a matter involving the state is also prohibited whether or not you are paid.[13]

Because the Commonwealth is entitled to the undivided loyalty of its employees, you may not be paid by other people or organizations regarding a matter in which the state has an interest. Nor may you act on behalf of other people or organizations, or act as an attorney for other people or organizations, if the state has an interest in a matter. Acting as an agent includes contacting the state in person, by phone, or in writing; acting as a liaison; providing documents to the state; and serving as spokesperson.

You may represent your own personal interests, even before DUA, on the same terms and conditions that would apply to other, similarly-situated members of

[11] *See* G. L. c. 268A, § 23(c).

[12] *See* G. L. c. 268A, § 23(B)(1).

[13] *See* G. L. c. 268A, § 4.

the public. But you may not engage in any prohibited conduct, including, for example, obtaining access to DUA-information that is not available, or not available in the same way, to other, similarly-situated members of the public.

c. "Inside track"

Being paid by the state, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies.[14] In general, you may not have a financial interest in a state contract, including a second state job. You also are generally prohibited from having an indirect financial interest in a contract that the state has with someone else. This provision is intended to prevent state employees from having an "inside track" to further financial opportunities.

Example of violation: A state employee buys a surplus computer from the agency for which the employee works.

Example of violation: A state employee wants to work for a non-profit that receives funding under a contract with the state. Unless she can satisfy the requirements of an exemption under G. L. c. 268, § 7, she may not take the job.

3. After You Leave State Employment

a. Forever Ban

After you leave your DUA job, you may never work or act for anyone other than the state on a matter on which you worked as a state employee, even if you are not paid. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts of particular matters that are of continuing concern to the state. The restriction does not prohibit you from using the expertise acquired in government service in your private activities.

b. One-year cooling off period

For one year after you leave your state job you may not participate in any matter over which you had official responsibility during your last two years of public service.

Former state employees are barred for one year after they leave state employment from personally appearing before any agency of the state in connection with matters that were under their authority in their prior state positions during the two years before they left.

[14] *See* G. L. c. 268, § 7.

Section 2. Federal requirements: fact-finding and determinations

Massachusetts, like other states with an unemployment insurance (UI) law approved by the United States Secretary of Labor, receives payment from the federal government for the amount the Secretary determines necessary for the proper and efficient administration of the law.[15] One of the conditions that a state's law must meet to be eligible for certification is that the state's methods of administration are "reasonably calculated to insure full payment of unemployment compensation when due."[16] Among other things, this requirement means that DUA, as the state agency responsible for administering the state's unemployment compensation system, must promptly obtain the facts and apply the law in a manner that will reasonably insure both:

- timely first payment of valid claims; and
- timely determination of non-monetary issues.

DUA's fact-finding and determinations are reviewed to determine our degree of compliance with federal fact-finding standards regarding benefits timeliness and quality (BTQ). Scoring criteria for non-monetary issues are set forth in ET Handbook 301, a publication of the U.S. Department of Labor's Employment and Training Administration.

ET Handbook 301 sets forth five data elements, out of a total of 24 elements, considered in the quality review of nonmonetary determinations. Data elements 20 (claimant information) and 21 (employer information) are intended to ensure that the adjudicator gathered, or made a reasonable attempt to gather, all the relevant and critical facts from claimants and employers necessary to determine the issue adjudicated. The facts must be of sufficient quantity and quality to support the determination's findings and the rationale.

Data element 22 (facts from others) is intended to insure that the adjudicator gathered, or made a reasonable attempt to gather, all relevant and critical facts from others who possess information needed to determine the issue adjudicated. These facts include, but are not limited to, labor market information, local commuting patterns, etc. Labor market information used in reaching a conclusion must be documented in the adjudicator's reasoning. The relevant and critical facts gathered from others, combined with the facts from the claimant and employer, should form the basis for the determination.

Data element 23 (law and policy correctly applied) concerns the correct application of state law and policy regarding eligibility for UI benefits to the relevant and critical facts obtained and documented in the fact-finding process. Data element 24 (the

[15] *See* 42 U.S.C. § 502(a).

[16] 42 U.S.C. § 503(a)(1).

written determination) evaluates the adequacy of the written determination in providing: (1) a summary of the relevant and critical facts on which the determination is based; (2) the reason(s) for allowing or denying benefits; and (3) the conclusion or legal result of the decision.

A. Reasonable attempt(s) requirements

All attempts made to obtain information from any claimant, employer, or third party must be documented**.** The first attempt may be made in writing; UI Online (or the adjudicator) will send a written request in the form of a fact finding questionnaire to the claimant's, employer's, or third party's address of record advising the affected party that information is needed to determine the issue and that a failure to respond to the request by a certain date will result in a decision based on all available information.

Any deadline set for receipt of information must be **reasonable**, for example, five days, seven days, or 10 days, and in no case less than two business days.

A reasonable attempt is considered to have been made if:

- the claimant, employer, or third party responds to the initial request for information (fact-finding); or

- a request for information was sent by the party's preferred method of correspondence (electronic or U.S. Mail.) (If it is returned by the U.S. Postal Service as undeliverable, the address should be verified with current records. If the address is verified as correct, a reasonable attempt was made.)

Rebuttal is an opportunity to contradict or disprove an argument by offering a counter-argument or countervailing proof. A party must be offered the opportunity to rebut new or contrary evidence from another party or non-party that may adversely affect the first party. If fact finding has been returned by the deadline date, adjudicators are still responsible for determining whether all discrepancies have been clarified and all aspects of the issue have been addressed. If there are still questions that need to be answered or facts that need to be rebutted before an eligibility determination can be made, adjudicators should proceed with established procedures and contact the party for additional information by telephone. This contact must be documented in UI Online. If parties are not available, adjudicators must leave a detailed message requesting information pertaining to the pending issue with a deadline for response of two business days.

The claimant/employer/TPA should be instructed to contact the Fact Finding line within the two business days to provide the additional requested information. Adjudicators will leave a detailed description of the information requested in the voicemail (including the phone number called) in the "Add Notes" section to inform anyone looking at the claim that an additional contact was made.

Adjudicators must communicate to the claimant/employer/TPA during the phone call, or when leaving a message, exactly what information is needed to resolve the outstanding issue. **No adjudicator shall refuse to give the claimant/employer/TPA the details of the missing information when the call is made. Also, no adjudicator shall tell the contacted party that DUA Fact Finding staff will tell them what information is needed to resolve the issue.**

If the employer/TPA refuses to participate in the fact finding process, either because the adjudicator cannot provide the claimant's social security number or the employer/TPA disagrees with the amount of information requested, adjudicators should inform the employer/TPA that it will be noted they would not provide information needed to adjudicate the claim and a determination will be made based on the available information. A detailed note must then be placed in the claim explaining exactly how the employer/TPA refused to participate in the process, for example: "TPA stated she could not find the record with only the last 4 digits of the SSN or the claimant name." ***Staff should not send a custom fact-finding questionnaire because the employer/TPA would not provide information needed to adjudicate the claim.***

If there is no active phone number available to contact the party, send a custom fact finding questionnaire requesting the additional information by the designated correspondence preference using a **five-day deadline**. Be sure to leave a detailed note to explain your action.

B. Element 20 – Claimant information

The claimant must be given the opportunity to be heard and to present information on any potentially disqualifying issue or conflicting relevant and critical facts from the employer or another party. An adjudicator does an adequate job if: (a) all of the relevant and critical claimant information is obtained and documented in the written record; or (b) some or all of the relevant and critical claimant information is missing, but the documentation establishes that a reasonable attempt was made to obtain the missing information.

C. Element 21 – Employer information

Employer information is essential in separation, refusal-of-work, labor dispute and certain deductible income cases. Also, the employer must be given the opportunity to be heard and to refute information that could be adverse to the interests of the business. Employer information need not be requested if: (a) the separation is due to a voluntary quit and the claimant gives clearly-disqualifying information; or (b) the employer has responded that it will not participate in the adjudication process. Even if the employer fails to respond to a notice of initial claim filing, DUA must do a full investigation. An adjudicator does an adequate job if: (a) all of the relevant and critical employer information is obtained and documented in the written record; or (b) some or all of the relevant and critical employer information is missing, but the

documentation establishes that a reasonable attempt was made to obtain the missing information.

If the employer is clear in its communication that it will not participate in the adjudication process or is unwilling to provide any further information on a specific issue, then no further attempts are needed to contact an employer for additional information about an issue. The case file must include information documenting that the employer chose either not to participate or not to provide any further information as requested.

But if an employer states something to the effect of "No information available at this time" it is not clear whether the employer does not want to participate in the adjudication process or has information useful in making a determination. The adjudicator, therefore, should send additional fact-finding or seek a rebuttal when appropriate.

In all circumstances in which the information received does not include all the information necessary to make a determination, an additional attempt must be made to re-contact the party to obtain the necessary information. One additional reasonable attempt will satisfy this criterion.

If the claimant's fact-finding reveals that the claimant's leaving was the result of strictly personal reasons that had nothing to do with the workplace and will result in a disqualification, the employer does not have to be contacted for a statement on the issue.

D. Element 22 – Information (facts) from others

It sometimes is necessary for the claimant or the employer to provide relevant information from other parties to substantiate their position. "Others" includes, but is not limited to, physicians, union officials, school officials, public transportation officials, licensing agencies, and other governmental agencies such as the Department of Transitional Assistance, the Department of Industrial Accidents, the Department of Career Services, and the United States Citizenship and Immigration Services. An adjudicator does an adequate job if: (a) all relevant and critical information from others is obtained and documented in the written record; or (b) some or all relevant and critical information from others is missing, but the documentation establishes that a reasonable attempt was made to obtain the information.

E. Element 23 – Law and policy correctly applied

The adjudicator must apply Massachusetts law and policy regarding UI eligibility to the relevant and critical facts obtained and documented in the case file. Law and policy establish whether, for example, a discharge was or was not for deliberate misconduct in willful disregard of the employer's interest or whether a voluntary quit was or was not with good cause attributable to the employer. An adjudicator

satisfies this criterion if all relevant and critical facts were obtained, or a reasonable attempt was made to obtain them, and the nonmonetary determination is correct.

F. Element 24 - The written determination

The written determination communicates DUA's determination to allow or deny UI benefits as a result of the fact-finding investigation. Federal requirements mandate the issuance of a written determination notice to the claimant when benefits are denied. This element is considered adequate when the written determination presents: (1) a summary statement of the documented relevant and critical facts upon which the determination is based; (2) the reasoning for allowing or denying benefits (or for accepting one version of a fact over another, that is, a credibility finding); (3) the conclusion of law and the legal result; and (4) required appeal information.

Section 3. Burden of proof; substantial and credible evidence; preponderance of the evidence

The adjudicator's role as a fact-finder requires more than simply gathering statements and information. The adjudicator has to sort through the information to decide what is relevant and necessary to determining the issue at hand. The adjudicator must also decide whether each piece of information has been established by substantial and credible evidence, because if not, it is not a fact, but merely an unsupported statement. When making determinations, it is important that adjudicators only consider facts that are supported by substantial and credible evidence.

Substantial and credible evidence is supported by the material in the case file, and is the kind of evidence that reasonable people use to support their conclusions. If the parties agree on a fact, it will be considered to be supported by substantial and credible evidence, unless the adjudicator has a valid and objective reason to not believe the parties. A statement by one party will be considered substantial and credible evidence for establishing a fact if the other party does not dispute the statement, unless the adjudicator has a valid and objective basis for finding the statement not credible. If a relevant fact is disputed by the parties, the adjudicator must look at all of the information in the case file and decide which party's assertion is more likely accurate.

Then, once the facts are established, the adjudicator analyzes the facts to decide whether the party with the **burden of proof** has met their burden, and has shown by a preponderance of the evidence that the claimant is or is not entitled to benefits. If one conclusion is more likely correct than another, then that conclusion will be considered to be supported by a **preponderance of the evidence**. Put another way, preponderance of the evidence means that a fact or facts have been shown to be more likely true than not true.

DUA uses the word "burden" in the legal sense of the word; it basically means "responsibility." **Remember: who has the burden of proof depends on the issue. For discharges, the employer has the burden; for quits, the claimant has the burden.**

There are a number of steps involved in determining whether a claimant is eligible for benefits, and they generally flow in this order:

1. The claimant establishes initial eligibility for benefits. To meet the initial eligibility requirements, the claimant must establish a recent history of work in qualifying employment, earned sufficient wages over the relevant period of time, and is totally or partially unemployed. Most of the initial eligibility issues are handled by the Wage Processing Unit.

2. Then, the nature of the separation is determined: was the claimant laid off due to a reduction in workforce, did the employer fire (discharge) the claimant, or did the claimant quit? Often the parties **agree on the nature of the separation**, and, unless the adjudicator has a valid and objective basis for finding otherwise, the adjudicator does not need to determine who initiated the separation.

- In discharge cases, the employer is the party most likely to have information about its reasons for firing the claimant, so the burden is on the employer to establish by substantial and credible evidence that the claimant is disqualified under G .L. c. 151A, § 25(e)(2). (See Chapter 8 - Discharge, suspension, and conviction.)

- In quit cases, the claimant is the party most likely to have information about his or her reasons for leaving work, so the burden is on the claimant to establish by substantial and credible evidence that that the reason for leaving was not disqualifying under G. L. c. 151A, § 25(e)(1). (See Chapter 7 - Voluntary leaving.)

- In lay-off cases, the claimant will usually be approved for benefits without an issue being created. If the adjudicator learns that the employer is going out of business or permanently reducing its workforce, it is a possible plant closing, and the UI Policy and Performance Department should be notified. (See Chapter 9 - Total and partial unemployment.)

2A. If the parties **disagree about the nature of the separation**, then the burden of proof is on *the employer*. (See Chapter 6 - Separations.)

- If the employer carries this burden and establishes that the claimant quit, then the burden shifts to the claimant to establish that the reason for leaving work was not disqualifying. (See Chapter 7 - Voluntary leaving.)

- But if the employer does not establish by a preponderance of the evidence that the claimant quit, then the separation is considered a discharge, and the employer must prove that the claimant was discharged for disqualifying reasons. (See Chapter 8 - Discharge, suspension and conviction.)

3. After a claimant has been determined to be eligible based on the reason for separation from employment, additional issues may come up that could affect the claimant's continued eligibility for benefits, such as:

- a failure to timely request benefits (see Chapter 2 - Filing requirements and considerations);

- whether the claimant is able and available for work (see Chapter 4 – Able, available, and actively seeking work); or

- has refused an offer of suitable work (see Chapter 5 - Suitable work).

Section 4. Limited English Proficiency (LEP) claimants

A. Statute and regulations

G. L. c. 151A, § 62A(d)(iii)

> (d) The deputy director shall take any such actions as may be necessary to ensure that any notice to an individual issued by the division:
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> (i) is written in simple and clear language;
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> (ii) includes the address and telephone number of the regional office of the division which serves the recipient and the statewide toll free telephone number; and
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> (iii) …the division shall issue all notices and materials explaining the provisions of this section in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other language that is the primary language of at least 10,000 or 1/2 of 1% of all residents of the commonwealth. If the division fails to issue a bilingual notice in the claimant's primary language and such omission results in the claimant's failure to meet a deadline or requirement, the division's omission shall constitute good cause for the claimant's failure.

430 Code Mass. Regs. § 4.13(4) (filing a request for a hearing)

> … [W]here the party is an individual whose preferred language is listed under M.G.L. c.151A, § 62A and who did not receive the Commissioner's determination in his or her preferred language, the request for hearing shall be deemed timely if filed within 60 calendar days from the date of mailing of the determination or if filed after the 60-day period and the reason for the delay in filing is caused by the Commissioner's determination having not been in his/her preferred language.

430 Code Mass. Regs. § 4.14(5) (good cause for a late appeal)

> The Commissioner may extend the ten-day filing period where a party establishes to the satisfaction of the Commissioner or authorized representative that circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten-day filing period. Examples of good cause for a failure to file a timely request for a hearing include, but are not limited to, the following:
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(5) An inability to effectively communicate or comprehend English and the party is unable to find a suitable translator to explain the notice of determination within the ten-day filing period;

B. DUA policy

DUA is committed to providing equal access to LEP claimants. To achieve this goal, DUA should communicate with LEP claimants in their primary language whenever possible (and always when required by law). When an LEP claimant's primary language is **Spanish, Portuguese, Haitian Creole, Chinese, Vietnamese, Russian, Khmer, Laotian, Italian, Korean, Arabic, or French**, DUA must "issue all notices and materials explaining the provisions of this section" in the claimant's primary language.[17] In providing equal access to LEP claimants, the following principles guide all DUA communication with LEP claimants.

C. Identification of a claimant's primary language

Most often, an LEP claimant first contacts DUA when filing a claim for UI benefits. When the initial claim is filed, DUA staff will determine the claimant's primary language and enter it into the UI system. If staff are unable to identify the claimant's primary language, they should contact staff at the Office of Multilingual Services.

Staff must enter in UI Online whatever language the claimant names as primary, even where the claimant may be able to communicate effectively in English. The question to be asked is not whether the claimant has some English skills but rather, what is the person's primary language? If a DUA staff member later learns that a claimant's primary language has been incorrectly entered, whether with English as the claimant's primary language or otherwise, UI Online should be updated.

D. Oral communications with claimants

All oral communication should be in a claimant's primary language whenever possible (and always when required by law), unless the claimant has specifically directed otherwise. When a claimant has identified a primary language other than English, DUA staff may not decide that the claimant's proficiency in English justifies communicating in English.

A DUA employee who speaks the claimant's primary language should be used whenever possible to communicate with the claimant. When such a staff member is not available, DUA staff should utilize the appropriate language service listed on the Multilingual Services page on DUA's intranet site.

DUA should not allow a claimant's child to interpret for the claimant. Children, family, and friends generally are not trained interpreters. Also, the issue that the

[17]G. L. c. 151A, § 62A(d)(iii).

claimant is in contact with DUA about may deal with sensitive and explicit subject matter, such as domestic violence, separation from work due to sexual harassment, etc. It is particularly inappropriate to engage in these types of conversations with minors.

E. Translated materials and good cause protections

When an LEP claimant's primary language meets the statutory requirements specified by G. L. c. 151A, § 62A(d)(iii)—**Spanish, Portuguese, Haitian Creole, Chinese, Vietnamese, Russian, Khmer, Laotian, Italian, Korean, Arabic, or French—**DUA must "issue all notices and materials explaining the provisions of this section" in the claimant's primary language. Whenever (1) DUA fails to send an LEP claimant a bilingual notice required to be in the claimant's primary language in that language, and (2) the claimant credibly represents to DUA that DUA's failure resulted in the claimant failing to meet a deadline or requirement, good cause should be found for the claimant's failure. Although DUA is not obligated to translate notices into languages not specified in § 62A(d)(iii), DUA will apply this good cause policy to all LEP claimants.

If good cause is not found, the reason must be stated in the notice provided to the claimant. A reason for not finding good cause must be consistent with LEP claimants' statutory-entitlement to bilingual notice. For example, an adjudicator may not base a finding of no good cause on the grounds that the claimant has some ability with English, should have learned to read English, or should have asked a family member, friend, or acquaintance to translate the document. This means that, if a claimant states that DUA's failure to send a notice in the claimant's preferred language caused the claimant to miss a deadline or not meet a requirement, the adjudicator must decide whether the claimant's statement is credible. If the adjudicator decides that the statement is credible, then good cause should be found. If the adjudicator finds the claimant's statement not to have been credible, the adjudicator must state the specific reason(s) for so deciding. If the adjudicator cannot state a specific reason for doubting the claimant's credibility, then good cause must be found.

F. Examples of "good cause"

1. Allegations of fraud based upon unreported earnings

G. L. c. 151A, § 25(j)

> No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—
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> ***
>
> (j) Any week in which the individual fraudulently collects benefits while not in total or partial unemployment. Whoever fraudulently collects

> benefits while not in total or partial unemployment, may be disqualified for each otherwise compensable week for each such week of erroneous payment; … provided … that the individual shall have had actual notice of the requirement to report his earnings and the notice shall have met the requirements of clause iii of subsection (d) of section 62A.…

All UI recipients, including LEP claimants, are required to report any earnings they may have from work performed while collecting benefits. Although ignorance of this obligation does not excuse noncompliance, before an "at fault" finding for not reporting earnings may be made, an inquiry must be made to determine whether the claimant's inability to understand or communicate in English led to the failure to report earnings. If it did, then an "at fault" finding should not be made. Under G. L. c. 151A, § 25(j), a compensable week penalty can never be imposed upon a claimant who did not have actual notice, in compliance with G. L. c. 151A, § 62A(d)(iii), of the reporting requirement.

2. Good cause for pre-dating a UI claim

Good cause for pre-dating a UI claim shall be found when a claimant credibly states that the late filing resulted from the claimant's limited English proficiency.

3. Good cause for filing a late appeal

In accordance with 430 Code Mass. Regs. § 4.13(4), an LEP claimant who did not receive a determination in the claimant's preferred language will be deemed to have made a timely request for a hearing if the request is filed within 60 calendar days from the date the determination was sent to the claimant, or filed beyond 60 days and the reason for the delay is because the claimant did not receive the determination in his/her preferred language, no questions asked.